

P & C Lighting Center, Inc. and International Brotherhood of Electrical Workers, Local 139, Annuity, Welfair, Pension and Education Funds. Case 3-CA-14751

March 31, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 26, 1991, the National Labor Relations Board issued a Decision and Order in this proceeding¹ in which it, inter alia, ordered the Respondent to make its bargaining unit employees whole for any losses suffered by them by reason of the Respondent's unlawful failure to adhere to the 1985-1990 collective-bargaining agreement, as well as to make whole individuals who were denied the opportunity to work for the Respondent because of the Respondent's unlawful refusal to continue using the Union's hiring hall. A controversy having arisen over the amounts due under the Board's Order, the Regional Director for Region 3 issued a compliance specification and notice of hearing on October 31, 1991. Subsequently, the Respondent filed an answer admitting in part and denying in part the allegations in the compliance specification.

On December 12, 1991, the General Counsel filed with the Board a Motion for Partial Summary Judgment, with exhibits attached. On December 24, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent has failed to file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

The Respondent's answer, inter alia, generally denies the amounts due and the number of hours allegedly worked by each employee. To the extent that the answer generally denies the accuracy of the backpay figures, the answer fails to satisfy the requirements of Section 102.56(b) of the Board's Rules and Regulations, which provides in pertinent part:

[I]f the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnish the appropriate supporting figures.

¹ 301 NLRB 828.

These matters are within the Respondent's knowledge and its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Section 102.56(b).

Accordingly, pursuant to Section 102.56(c) of the Board's Rules and Regulations, the Board deems those matters alleged in the compliance specification that are within the knowledge of the Respondent, and which the Respondent has failed to deny in the manner required by Section 102.56(b), to be admitted as true. Specifically, the allegations contained in the following paragraphs of the compliance specification are deemed to be admitted to be true: paragraph 4, i.e., the number of hours each employee worked in each calendar quarter of the backpay period and the net backpay amounts owing each employee; paragraph 8, insofar as it alleges the amounts the Respondent is required to remit to the fringe benefit funds referred to in paragraph 7 on behalf of each employee (but not on behalf of each referral); and paragraph 9, insofar as it alleges total hours worked by employees, and the total amounts owed employees (but not referrals). In addition, the Respondent's answer admitted certain allegations in the compliance specification, i.e., paragraph 1 concerning the backpay period; paragraph 2 concerning the duration of the contract; paragraph 3 concerning the applicable wage rates; and paragraph 7 concerning fringe benefit contributions.

Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment,² and we conclude that the net amounts due the bargaining unit employees are as stated in the compliance specification and we will order payment by the Respondent to the unit employees and to the fringe benefit funds listed below on behalf of the unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, P & C Lighting Center, Inc., Hornell, New York, its officers, agents, successors, and assigns, shall pay the amounts set forth below.

1. Make whole each of the employees named below by payment to them of the amounts set forth opposite their names, plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283

² We note that the Respondent's answer also denied knowledge of the existence of hiring hall referrals and their availability for work. We further note that the General Counsel seeks summary judgment on the allegations in the compliance specification only insofar as they relate to bargaining unit employees and not to referrals. Therefore, we shall remand this proceeding, insofar as it involves hiring hall referrals, to the Regional Director for further appropriate action.

NLRB 1173 (1987), minus tax withholdings required
by Federal and state laws:

Wesley Merrick
Roger Price

72,589.89
70,029.45

Jody Brizzee	\$66,801.16
Anthony Cappadonia	19,949.12
Michael D'Antonio	48,454.00
William Dufour Jr.	6,256.00
James Gerla	975.10
Lee Knapp	40,958.36

2. Make whole each of the employees named below
by payment of contributions on their behalf into the
fringe benefit funds named below in the amounts set
forth opposite the employees' names, plus any addi-
tional amounts (see *Merryweather Optical Co.*, 240
NLRB 1213 (1979)):

	<i>Annuity Fund</i>	<i>Educational Fund</i>	<i>Pension Fund</i>	<i>Welfare Fund</i>
Jody Brizzee	\$9,558.10	\$757.61	\$10,080.50	\$8,377.45
Anthony Cappadonia	3,487.90	315.15	4,122.00	3,109.60
Michael D'Antonio	9,561.95	787.13	10,415.00	8,405.30
William Dufour Jr.	1,100.00	82.50	1,100.00	990.00
James Gerla	199.00	14.93	199.00	179.10
Lee Knapp	6,384.50	539.25	7,117.00	5,571.60
Wesley Merrick	10,282.55	832.80	1,072.00	9,072.20
Roger Price	10,413.95	847.50	1,218.00	9,190.20

IT IS FURTHER ORDERED that the proceeding, insofar
as it involves hiring hall referrals, is remanded to the

Regional Director for Region 3 for further appropriate
action.